

**IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**MATTHEW TOTILO, individually and on
behalf of himself and all others similarly,
situated,**

Plaintiff,

v.

**STEVEN F. HERBERT and
JAMES P. GROSS**

Defendants.

07-cv-10991 (LAK)

MOTION TO ADMIT COUNSEL PRO HAC VICE

PURSUANT TO RULE 1.3(c) of the Local Rules of the United States district Courts for the Southern and Eastern Districts of New York, I, Lisa Albert, a member in good standing of the bar of this Court, hereby move for an Order allowing the admission pro hac vice of

Applicants Name: Michael R. Smith
Firm Name: King & Spalding LLP
Address: 1180 Peachtree Street, N.E.
City/State/Zip: Atlanta, Georgia 30309
Phone Number: (404) 572-4600
Fax Number: (404) 572-5100

Michael R. Smith is a member in good standing of the bars of the Supreme Court of Georgia; the Superior Court of DeKalb County, Georgia; the Georgia State Court of Appeals; the United States Court of Appeals for the Eleventh Circuit; the United States Court of Appeals for the Sixth Circuit; the United States Court of Appeals for the Seventh Circuit; the United States Court of Appeals for the Fourth Circuit; the United States District Court for the Northern District of Georgia; the United States District Court for the Southern District of Georgia; and the United

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States Tax Court. There is no pending disciplinary proceeding against Mr. Smith in any State of Federal court.

Dated: January 14, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Albert", is written over a horizontal line.

LISA ALBERT(LA-7264)

KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003
Telephone: 212-556-2100
Fax: 212-556-2222

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FOR THE SOUTHERN DISTRICT OF NEW YORK**

MATTHEW TOTILO, individually and on behalf of himself and all others similarly, situated,

Plaintiff,

V.

**STEVEN F. HERBERT and
JAMES P. GROSS**

Defendants.

07-cv-10991 (LAK)

**AFFIDAVIT OF LISA ALBERT
IN SUPPORT OF MOTION TO
ADMIT COUNSEL
PRO HAC VICE**

[illegible]

Lisa Albert, being duly sworn, hereby deposes and says as follows:

1. I am an associate at King & Spalding LLP, counsel for Defendants Steven F. Herbert and James P. Gross in the above captioned action. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of Defendants' motion to admit Michael R. Smith, Esq. as counsel pro hac vice to represent Defendants in this matter.
2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in May of 2000. I am also admitted to the bar of the United States District Court for the Southern and Eastern Districts of New York, and am in good standing with this Court.
3. I have been associated with Mr. Smith since 1999.
4. Mr. Smith is a Partner at King & Spalding LLP in Atlanta, Georgia and a member in good standing of the Supreme Court of Georgia; the Superior Court of DeKalb County,

Georgia; the Georgia State Court of Appeals; the United States Court of Appeals for the Eleventh Circuit; the United States Court of Appeals for the Sixth Circuit; the United States Court of Appeals for the Seventh Circuit; the United States Court of Appeals for the Fourth Circuit; the United States District Court for the Northern District of Georgia; the United States District Court for the Southern District of Georgia; and the United States Tax Court. I am attaching a true and correct copy of the Good Standing Certificate of Michael R. Smith as Exhibit A.

5. I have found Mr. Smith to be a skilled attorney. He is a person of integrity and high moral character. He is experienced in Federal practice and is familiar with the Federal Rules of Civil Procedure.
6. Accordingly, I am pleased to move this court for the admission of Michael R. Smith, pro hac vice.
7. I respectfully submit a proposed order granting the admission of Michael R. Smith, pro hac vice, which is attached hereto.

WHEREFORE it is respectfully requested that the motion to admit Michael R. Smith, pro hac vice, to represent Defendants in the above captioned matter, be granted.

January 14, 2008

Respectfully submitted,



LISA ALBERT (LA-7264)

KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003
Telephone: 212-556-2100
Fax: 212-556-2222

Anne Marie Capuano
1-14-08

ANNE MARIE CAPUANO
Notary Public, State Of New York
No. 24-4923102
Qualified In Kings County
Commission Expires March 14, 20 10



STATE BAR OF GEORGIA

Supporting Lawyers' Service to the Public and the Justice System

Mr. Michael R. Smith
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309

CURRENT STATUS: Active Member-Good Standing

DATE OF ADMISSION TO PRACTICE: 06/22/1983

Attorney Bar Number: 661689

Today's Date: January 10, 2008

Listed below are the public disciplinary actions, if any, which have been taken against this member:

State Disciplinary Board Docket #	Supreme Court Docket #	Disposition
N/A	N/A	N/A

The prerequisites for practicing law in the State of Georgia are as follows:

- Must be certified by the Office of Bar Admissions, either by Exam, or on Motion (Reciprocity).
- Sworn in to the Superior Court in Georgia, which is the highest court needed for individuals to practice law in the State of Georgia.
- Enrolled with the State Bar of Georgia, which is an arm of the Supreme Court of Georgia.

Attorneys licensed in Georgia and whose membership is current are eligible to practice law in Superior Court. Attorneys may, upon application, apply for admission to the Supreme, District and State Court of Appeals.

Under the privacy/confidentiality provision of the Bar Rule 4-221(d), any complaint against a member resolved prior to the filing and docketing of a disciplinary case in the Supreme Court is not a matter of public record, and may not be revealed without a waiver from the member. It is the policy of the State Bar of Georgia to answer any inquiry about a member by disclosing only those complaints that have been docketed in the Supreme Court. With respect to matters that are currently pending as active, undocketed cases, when an inquiry is received, the State Bar of Georgia shall not disclose the existence of those complaints. Such non-disclosure should not be construed to confirm the existence of confidential complaints since the vast majority of members in good standing are not the subjects of such confidential complaints.

This member is currently in **"good standing"** as termed and defined by **State Bar Rule 1-204**. The member is current in license fees and is not suspended or disbarred as of the date of this letter.

STATE BAR OF GEORGIA

Judy Hill

Official Representative of the State Bar of Georgia

HEADQUARTERS
104 Marietta Street NW, Suite 100
Atlanta, Georgia 30303
(404) 527-8700 ■ (800) 334-6865
FAX (404) 527-8717
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SOUTH GEORGIA
244 E. Second Street (Zip 31794)
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Tifton, Georgia 31793-1390
(229) 387-0446 ■ (800) 330-0446
FAX (229) 382-7435

**IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MATTHEW TOTILO, individually and on behalf of himself and all others similarly, situated,	:	
	:	07-cv-10991 (LAK)
	:	
Plaintiff,	:	ORDER FOR ADMISSION
	:	PRO HAC VICE ON
	:	WRITTEN NOTICE
v.	:	
	:	
	:	
STEVEN F. HERBERT and JAMES P. GROSS	:	
	:	
	:	
Defendants.	:	

Upon the motion of Lisa Albert, attorney for Defendants Steven F. Herbert and James P.

Gross and said sponsor attorney's affidavit in support; **IT IS HEREBY ORDERED THAT**

Applicants Name:	Michael R. Smith
Firm Name:	King & Spalding LLP
Address:	1180 Peachtree Street, N.E.
City/State/Zip:	Atlanta, Georgia 30309
Phone Number:	(404) 572-4600
Fax Number:	(404) 572-5100

is admitted to practice pro hac vice as counsel for Defendants Steven F. Herbert and James P. Gross in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing the discipline of all attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at nysd.us.courts.gov. Counsel shall forward the pro hac vice fee to the Clerk of the Court.

Dated: _____

City, State: _____

United States District Judge

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Plaintiff,

V.

**STEVEN F. HERBERT and
JAMES P. GROSS**

Defendants.

07-cv-10991 (LAK)

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for Plaintiff with a true and correct copy of the (i) Motion to Admit Counsel Pro Hac Vice, (ii) Affidavit of Lisa Albert in Support of Motion to Admit Counsel Pro Hac Vice with attached Certificates of Good Standing, (iii) Order for Admission Pro Hac Vice on Written Motion by electronic mail and by causing the same to be deposited in the United States Mail in an envelope with adequate postage affixed thereon to ensure delivery via first-class mail as follows:

LAW OFFICES OF KENNETH ELAN
217 Broadway, Suite 606
New York, NY 10007
Telephone: 212-619-0261
Fax: 212-385-2707

LAW OFFICES BERNARD M. GROSS, P.C.
DEBORAH R. GROSS
ROBERT P. FRUTKIN
Suite 450, The Wanamaker Bldg.
100 Penn Square East
Philadelphia, PA 19107
Telephone: 215-561-3600
Fax: 215-561-3000

Dated: January 14, 2008

Lisa Albert
Lisa Albert (LA-7264)